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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/768,803 01/24/2001 Charlotte Johansen 5248,210-US 3908

25908 7590 04/04/2003

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500 FIFTH AVENUE
SUITE 1600
NEW YORK, NY 10110

EXAMINER

MARX, IRENE

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 04/04/2003

①

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/768,803

Applicant(s)

JOHANSEN, CHARLOTTE

Examiner

Irene Marx

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 24 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 46-57 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 46-57 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/14/03 has been entered. Claims 47-58 are being considered on the merits.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 47-58 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

No basis or support is found in the present specification for a haloperoxidase concentration of 0.01-100 mM. Original claim 17 and Specification, page 6, are directed to 0.01-100 mg enzyme protein per liter, for example.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

Claims 47-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allen taken with Winkler and Cantor *et al.* for the reasons as stated in the last Office action and the further reasons below.

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The claims are directed to a method of using a haloperoxidase composition comprising a haloperoxidase, a hydrogen peroxide source, a halide source and an ammonium source to clean, disinfect or inhibit microbial growth on a hard surface.

Allen teaches a method of using haloperoxidase composition comprising a haloperoxidase, a hydrogen peroxide source, a halide source and an amino acid to clean, disinfect or inhibit microbial growth on any surface by producing hydrogen peroxide (See, e.g., columns 6-7). The reference differs from the claimed invention in that the amino acids are not ammonium salts.

However, Winkler teaches that compounds such as ammonium salts are suitably added to haloperoxidase compositions to maintain a suitable pH for peroxidase in order to produce the desired hydrogen peroxide having intrinsic disinfecting and cleansing properties. (See, e.g., col. 5, in particular line 53). In addition, Cantor *et al.* adequately demonstrate that ammonium salts are suitable additives to detergent compositions in view of their surfactant and/or germicidal properties. See, e.g., col. 4 for various ammonium chloride derivatives, which are also suitable halide sources.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to modify the method of Allen by providing various ammonium salts as suggested by the teachings of Winkler and Cantor *et al.* for the purpose of buffering and for the expected benefit of improving the germicidal and cleaning properties of the haloperoxidase composition.

Thus, the claimed invention as a whole was clearly prima facie obvious, especially in the absence of evidence to the contrary.

Response to Arguments

Applicant's arguments as they pertain to the above rejection have been fully considered but they are not deemed to be persuasive.

In response to Applicant's argument that none of the cited references alone or in combination teaches or suggests the methods claimed herein with respect to an ammonium salt, it is noted that Winkler and Cantor each disclose the use of an ammonium salt in conjunction with a haloperoxidase. Even though Winkler may not recognize that ammonium salts enhance

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the antimicrobial activity of a haloperoxidase. However, this is an intrinsic property or effect, such that it occurs whenever the combination is used.

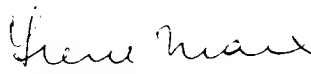
In the method of Allen haloperoxidase is used in combination with a hydrogen peroxide source, a halide source and an ammonium source to inhibit microbial growth on a surface, for example. As to the required ammonium salts, each of Winkler and Cantor teaches a process of using the material disclosed by Allen wherein an ammonium salt is added. Even though the method of use is not the same, one of ordinary skill in this art would have recognized at the time the claimed invention was made that the ammonium salts are suitable ammonium sources in order to have antimicrobial effects, for example.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irene Marx whose telephone number is (703) 308-2922. The examiner can normally be reached on Monday through Friday from 6:30 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743. The appropriate fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592, (703) 308-4242 and (703) 305-3014.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service whose telephone number is (703) 308-0198 or the receptionist whose telephone number is (703) 308-1235.


Irene Marx
Primary Examiner
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